Map.

SUPREME COURT OF THE UNITED STATES.

No. ~~284~~. 122.45.

WILLIAM GLASGOW, JR., AND WILLIAM C. TAYLOR, SURVIVING COMMISSIONERS OF THE 16TH SECTION IN TOWNSHIP 45 NORTH, OF RANGE 7 EAST, PL'FFS IN ERROR,

vs.

JAMES A. HARDY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

G. S. GIDEON, Printer, 511 Ninth street, Washington.

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Writ of Error.

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable Judges of the Supreme Court of the State of Missouri, greeting:

[SEAL.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, at March term, A. D. 1859, between William Glasgow, jr., and William C. Taylor, surviving commissioners of 16th section, in township 45 north, of range 7 east, plaintiffs, and James A. Hardy, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this 10th day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the district of Missouri, dated as aforesaid.

BEN. F. HICKMAN,
Clerk C. C. U. S. Missouri District.

Allowed by William Scott, presiding judge of the supreme court within and for the State of Missouri, this 23d June, 1859.

WILLIAM SCOTT.

THE STATE OF MISSOURI, *ss.*

I, William S. Glanville, clerk of the supreme court within and for the State of Missouri, held at Saint Louis, in obedience to the command of the within writ, herewith forward to the Supreme Court of the United States, at Washington, a full, true and complete transcript of the record and proceedings of said court in the case of William Glasgow, junior, and William C. Taylor, surv[illegible]

ving commissioners of the 16th section, township 45 north, plaintiffs in error, against James A. Hardy, defendant in error, as fully as the same now remain of record and on file in my office.

In testimony whereof, I hereto set my hand and the seal of said court, at office in St. Louis, this twenty-fourth day of August, anno eighteen hundred and fifty-nine.

[SEAL.]

WM. S. GLANVILLE, *Cl'k.*

THE STATE OF MISSOURI, *ss.*

Be it remembered, that on the 19th day of February, in the year 1858, there issued from the office of the clerk of the supreme court, within and for the State of Missouri, held at St. Louis, a writ of error in words and figures as follows:

Writ of Error.

The State of Missouri to the honorable the St. Louis Circuit Court, in said State, greeting:

Whereas, in the record and proceedings in a certain cause lately pending in said court, wherein William Milburn, William Glasgow, jr., and William C. Taylor, commissioners of the 16th section in township 45, are named as plaintiffs, and James A. Hardy, defendant, in a suit for the recovery of land, manifest error hath intervened to the great damage of the said plaintiffs, as by their complaint we are informed: Now, being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, command you, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said court, so that we may have them before us at our supreme court, to be begun and held in the city of St. Louis, in the county of St. Louis, in said State, on the third Monday in March next, so that our judges of our supreme court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right, and according to law, ought to be done. Witness Wiilliam S. Glanville, clerk of our said supreme court, at office, in the city of St. Louis, the nineteenth day of February, in the year of our Lord one thousand eight hundred and fifty-eight.

[SEAL.]

WM. S. GLANVILLE, *Clerk.*

Upon which writ is endorsed the following return:

Return on Writ of Error.

STATE OF MISSOURI,
County of St. Louis, ss.

In obedience to the within writ, I herewith transmit a true and complete transcript of the record and proceedings in the within named cause.

In testimony whereof, I hereto set my hand, and affix the seal of said court, at office in the city of St. Louis, this 23d day of Feb'y, 1858.

[SEAL.]

STEPHEN RICE, *Clerk.*

Whereupon, on the 26th day of February, 1858, there was filed in the office of the clerk of the supreme court said transcript, which is in the words and figures following, to wit:

Transcript from Circuit Court.

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that at the April term, 1855, on the 15th day of January, 1855, of the circuit court within and for the county aforesaid, a transcript was filed, which is in the words and figures following, to wit:

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that heretofore, to wit, on the fifteenth day of February, in the year 1854, there was filed in the office of the clerk of the St. Louis land court in and for said county, a petition, which is in the words and figures following, to wit:

Petition.

In the St. Louis Land Court—March Term, 1854.

WILLIAM MILBURN, WILLIAM GLASGOW, Jun., and William C. Taylor, Commissioners of the sixteenth section of township forty-five north, range seven east, Plaintiffs,
against
JAMES A. HARDY, Defendant.

The plaintiffs state that on the 11th day of April, 1851, they were duly appointed commissioners, as aforesaid, by the St. Louis county court, pursuant to the provisions of the act entitled "An act to authorize the sale of fractional section sixteen, township forty-five north, range seven east," approved March 3, 1851; that, as such commissioners, the plaintiffs were, on the first day of January, 1853, lawfully entitled to the possession of that tract of land situate in St. Louis county, known and described as the fractional section sixteen of township forty-five north, in range seven east, according to the survey of the public lands of the United States, and still continue so entitled; that afterwards, on the second day of January, 1853, the defendant had entered into said tract of land, and enclosed with fence about fifty acres, parcel of said sixteenth section, and still unlawfully withholds the possession of said parcel from the plaintiffs, to their damage two hundred dol-

lars. The plaintiffs pray for judgment for the possession of said parcel of land, and for their damages aforesaid, and for damages for the detention thereof till the possession be delivered to them, &c.

By their attorneys,

FIELD, WILLIAMS & BATES.

Willis L. Williams, attorney for the plaintiffs, being duly sworn, on his oath, says that he believes the foregoing petition and matters therein, as stated, to be true.

WILLIS L. WILLIAMS.

Sworn and subscribed before me, this 18th day of Feb'y, 1854.

CHARLES A. MANTZ, *Clerk.*

Summons.

The State of Missouri to the Sheriff of St. Louis County, greeting:

We command you to summon James A. Hardy to appear before the judge of our St Louis land court, on the first day of the next term thereof, to be held at the city of St. Louis, within and for the county of St. Louis, on the first Monday of March next, then and there to answer the complaint of William Milburn, William Glasgow, jr., and William C. Taylor, commissioners of the sixteenth section of township forty-five north, range seven east, as set forth in the annexed petition, and have you then and there this writ.

Witness Charles A. Mantz, clerk of our said court, with the seal thereof hereto affixed, at office, in the city of St. Louis, this 18th day of February, A. D. 1854.

[L. S.]

CHAS. A. MANTZ, *Clerk.*

Return on Summons.

Upon which summons is endorsed the following:

Executed this writ February 18th, 1854, in the county of St. Louis, by delivering a copy of this writ and the petition, as furnished by the clerk, to James A. Hardy, the within defendant.

JOHN M. WIMER,
Sheriff.

By THOMAS CHADBOURNE,
Deputy.

Defendant's Answer.

Afterwards, on Saturday, March 11th, 1854, the following further proceedings were had herein, to wit:

And now comes the defendant herein, and for answer to plaintiffs' petition, says he has no knowledge sufficient to form a belief as to whether plaintiffs on the 11th day of April, 1851, were duly appointed commissioners as aforesaid, by the St. Louis county court, pursuant to the provisions of the act entitled "An act to authorize the sale of fractional section sixteen, township forty-five north,

range seven east," approved March 3d, 1851; nor whether plaintiffs on the first day of January, A. D. 1853, were lawfully entitled to the possession of any part of that tract of land situate in St. Louis county, known and described as the sixteenth section, township forty-five north, in range seven east, according to the surveys of the public land of the United States.

Defendant denies that plaintiffs, as such commissioners as aforesaid, or in any other manner howsoever, were, on the first day of January, 1853, entitled to the possession of any land whatsoever, in the possession at any time of the defendant. He also denies that he unlawfully withheld at the commencement of this suit, or at any other time, the possession of about fifty acres, parcel of said sixteenth section, or any land whatever, from plaintiffs, to their damage $200.00, or any other sum whatsoever, or that he ever ejected or put the plaintiffs out from said parcel of land on said second day of January, A. D. 1853, or at any other time.

Defendant further says, that by the act of the Congress of the United States of America, approved the 13th day of June, A. D. 1812, entitled "An act of thus making further provisions for settling the claims to land in the Territory of Missouri," there was confirmed to Louis Laroche, or his legal representatives, a common-field lot belonging to the town of St. Louis, lying in the Big or Grand Prairie, and being one of the common-field lots of said Grand Prairie, and being two arpens in front by forty arpens in depth, bounded north by the field-lot formerly owned by Parent, or his legal representatives; east by vacant land; south by the field-lot formerly owned by Romdian dit Alexander Largris, or his legal representatives, and west by vacant land; which said common-field lot was cultivated and possessed by said Louis Laroche, or his legal representatives, or *them* under whom he claimed, prior to the 20th December, 1803; and afterwards, and on or about the 28th day of July, A. D. 1825, in pursuance of an act of said Congress approved the 26th day of May, A. D. 1824, entitled "An act supplementary to an act passed on the thirteenth day of June, 1812, entitled 'An act making further provision for settling the claims to land in the Territory of Missouri,'" the owners and claimants of said common-field lot, it being one of the common-field lots of said Grand Prairie, proceeded to investigate their said lot, by proving before Theodore Hunt, the recorder of land titles for said Territory of Missouri, cultivation and possession of said lot by such owners and claimants, and those under whom they claimed, prior to said 20th day of December, 1803, and the boundaries and extent thereof.

Defendant also says that the said legal representatives of Louis Laroche have had the actual, peaceable, and adverse possession of a part of the said common-field lot, claiming title to the whole, and thereupon the legal possession of the whole of said lot

interruptedly [uninterruptedly,] for more than twenty years next before the commencement of this suit, claiming title thereto, and to the *owners* thereof.

He also says that he is one of the legal representatives of said Louis Laroche, and as such, he is the owner of and entitled to the possession of one undivided half of the northern half of said common-field lot; and as such owner, he, together with his co-tenants, have had the possession of said premises; and being so possessed thereof, this defendant says that there have been entered and put upon said premises good and valuable fences, enclosing the same, and also valuable, substantial and permanent houses, including dwelling-houses and out-buildings, and other improvements, all of which improvements, buildings, and betterments, so put thereon, were made in good faith under the aforesaid title, and of the balance [value] of about $2,500, and he is the owner, and entitled to one-half of the same. He therefore prays judgment for all such improvements, if judgment of dispossession shall be given against him in this cause.

Defendant files herewith the following documents and instruments of title, the original not being in his power and control in cases in which copies are filed.

T. POLK,
Att'y for Def't.

James A. Hardy makes oath, and says that he believes the foregoing answer and the matters therein as stated are true.

JAMES A. HARDY.

Sworn to and subscribed before me this 11th March, 1854.

CHAS. A. MANTZ, *Clerk.*

Afterwards, on Saturday, the 7th October, 1854, the following further proceedings were had in this cause, to wit:

Petition for Change of Venue.

Now, at this day comes said defendant, by his attorney, and presents his petition for a change of venue of this cause, and the notice of presentation thereof being waived by the plaintiffs' attorney, and the said petition containing the allegations that the judge of this court is prejudiced against the said defendant, and in favor of said plaintiffs, and that he has just cause to believe that he cannot have a fair trial, on account of the cause above alleged, which allegations are verified by the affidavit of said defendant, it is, therefore, ordered by the court that the clerk of this court make out a full transcript of the record and proceedings in this cause, according to law, and certify the same to the circuit court of St. Louis county.

Said petition is in words and figures as follows:

To the Honorable the St. Louis Land Court:

The petition of said defendant, James A. Hardy, respectfully represents, that the judge of the court aforesaid is prejudiced against the said defendant, your petitioner, and in favor of said plaintiffs in this cause, and states that the petitioner has just cause to believe that he cannot have a fair trial on account of the cause above alleged. He therefore prays for a change of venue in this cause to the St. Louis circuit court; and, as in duty bound, he will ever pray, &c.

James A. Hardy, the above named defendant and petitioner, makes oath and says, that he verily believes that the foregoing petition and matters and things therein contained are true; and he also says that he has just cause to believe that he cannot have a fair trial on account of the causes alleged in said petition.

JAMES A. HARDY.

Sworn to and subscribed before me this 6th October, 1854.

WM. G. BLACKWOOD,
Notary Public.

Certificate of Clerk of Land Court.

STATE OF MISSOURI,
County of St. Louis, ss.

I, Charles A. Mantz, clerk of the St. Louis land court, in and for said county, certify the foregoing to be a full and perfect transcript of the record and proceedings in the cause, wherein William Milburn, William Glasgow, jr., and William C. Taylor, commissioners of the sixteenth section of township forty-five north, range seven east, are plaintiffs, and James A. Hardy is defendant, as the same remains of record in my office.

In witness whereof, I hereto set my hand and affix the seal of said court, at office, in the city of St. Louis, this 21st day of November, 1854.

[SEAL.]

CHAS. A. MANTZ, *Clerk.*

Continued.—Oct. T. 1855.

Afterwards, in the St. Louis circuit court, at the October term, 1855, on the 10th January, 1856, this cause was continued until the next term, awaiting the decision of a case in the supreme court.

Continued.—March T., 1856.

Afterwards, at the March term, 1856, this cause was again continued until the next term.

Continued.—Oct. T., 1586.

Afterwards, at the October term, 1856, this cause was again continued until the next term.

Afterwards, at the March term, 1857, this cause was again continued, and on motion of the parties herein, it is ordered by the court that this cause be set for trial the second Monday of the next term of this court.

Trial and Judgment.

And afterwards, to wit, at the October term, 1857, the following proceedings were had in this cause on Saturday, the 17th of October, 1857, to wit:

Now, at this day, come again said parties, by their attorneys, and thereupon comes also a jury, to wit: N. Barnum, Henry Bischoff, Michael Cook, Fred. Meyer, Peter Meyer, William Nalley, G. Herman, G. Sand Bull, Charles M. O'Hara, Laddin Davis, and George W. Fischer, twelve good and lawful men, who being elected, tried, and sworn, well and truly to try the matters in controversy, the trial of this cause progressed; and being finished, the jurors aforesaid find the issue joined in favor of said defendant. It is therefore considered by the court, that said plaintiffs take nothing by their said suit in this behalf, but that said defendant go hereof without day, and recover of said plaintiffs his costs and charges herein expended, and have thereof execution.

Motion for a New Trial made and overruled.

And on the 19th day of October, during said term, the plaintiffs filed a motion for a new trial.

And the court having duly heard and considered the motion of said plaintiffs for a new trial of this cause, and being thereof fully advised, doth order that said motion be overruled.

Bill of Exceptions.

And thereupon said plaintiffs filed their bill of exceptions, which is as follows:

This cause was tried by a jury on the 17th day of October, 1857. On this trial the plaintiffs, to maintain the issue on their part, gave in evidence the act of Congress, approved March 6th, 1820, entitled "An act to authorize the people of the Missouri Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and to prohibit slavery in certain Territories." Also an ordinance of the people of the State of Missouri, passed in convention on the 19th day of July, 1820, entitled "An ordinance declaring the assent of the people of the State of Missouri, by their representatives in convention assembled, to certain conditions and provisions in the act of Congress of the 6th of March, 1820, entitled "An act to authorize the people of Missouri Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and to prohibit slavery in certain Territories." *An* also an

act of the general assembly of the State of Missouri, approved March 3d, 1851, entitled "An act to authorize the sale of fractional section sixteen, township forty five north, range seven east."

Appointment of Commissioners by Co. Court.

The plaintiffs then read in evidence the record of the St. Louis county court, appointing the plaintiffs commissioners under the last mentioned act, as follows:

In the St. Louis County Court, April 11th, 1851.

STATE OF MISSOURI,
County of St. Louis, ss.

The court appoint William Milburn, William Glasgow, jr., and William C. Taylor, commissioners to take possession of section number sixteen, township forty-five north, range seven east, and to sell the same, or any part thereof, on such terms and in such manner as the court shall hereafter direct; the said commissioners having all the powers and subject to all the restrictions of the act of the general assembly of the State of Missouri, entitled "An act to authorize the sale of fractional section sixteen, township forty-five, range seven east," approved 3d March, 1857.

Certificate of Clerk of County Court.

STATE OF MISSOURI,
County of St. Louis, ss.

I, Josiah Thornburg, clerk of the county court within and for the county aforesaid, hereby certify that the forgoing is a true copy from the record of said court in my office.

In testimony whereof, I hereunto set my hand and affix the seal of said court at office, in the city of St. Louis, this 29th day of September, A. D. 1857. [SEAL.]

JOSIAH THORNBURGH,
Clerk.

Field-notes of Brown's Survey of frac. sec. 16.

The plaintiffs then read in evidence the field-notes of Brown's survey of fractional section 16, made in 1818, as follows:

Field-notes of Section 16, Township 45, Range 7 east.

From a point in widow Camp's N. boundary 15.75 westerly of Pettier's west line, where set a post, from which a b. o. 3 inch. diam. bears N. 39 W. 58 l., and a do. 3 inch. diam. bears S. 19 W. 100 l.; north between secs. 15 and 16, T. 45 N., R. 7 E., 9.53, set ¼ sec. post, from which a w. o. 3 in. diam. bears N. 2 E. 25 l., and a do. 3 in. dia. bears N. 89 E. 21 l. 29.53, the W. edge of a pond 2 chs. wide, 49.50, set post corner to secs. 9, 10, 15, and 16,

in a mound; west between secs. 9 and 16, T. 45 N., R. 7 E. 40.00, set ¼ sec. post in a hazel thicket; 80.00 set post corner to secs. 8, 9, 16, and 17, in a hazel thicket mound; land lies well; good soil; und. gth., hazel and bushes; south between secs. 16 and 17, T. 45, R. 7 E. 40.00, set ¼ sec. post in mound, 42.00, a branch 5 l. bears southerly 44.00, left branch bearing S. E. 51.00, a spring branch bears east 57.69; intersected E. Yoste's 80 arpent tract 7 chs. west of his northeast corner on Chouteau: set stone. Land gently rolling prairie.

OFFICE OF SURVEYOR GENERAL OF
ILLINOIS AND MISSOURI,
St. Louis, Oct. 9th, 1857.

The above is a correct copy from book 23, and pages 180 to 183 of the field-notes of Missouri surveys on file in this office, of the original field-notes of the lines between sections 15 and 16, 9 and 16, and 16 and 17, of township 45, range 7 east, of the 5th principal meridian, as said lines were surveyed in 1818 by Jno. [Joseph] C. Brown, under contract of 31 March, 1817.

JNO. LOUGHBOROUGH,
Surveyor General.

Plat of Survey of T. 45, R. 7 E.

The plaintiffs then exhibited in evidence an authenticated plat of T. 45 N., R. 7 E., certified by the surveyor general of Illinois and Missouri the 17th June, 1845, to be a true copy and an authenticated plat and description of a survey of the out-boundary of the town of St. Louis, as established by the surveyor general.

Agreement.

It was agreed between the parties that authenticated copies of the foregoing township and boundary plats, from the office of the surveyor general or the General Land Office, at Washington, may be used before any appellate court to which this case may be carried, with like effect as if the same were set forth in the bill of exceptions at large. The defendant admitted that the land in controversy lay without the exterior limits of said out-boundary surveys. The defendant further admitted, that at the commencement of this suit he was in possession of a part of said fractional section as stated in his answer. The plaintiffs then rested.

Defendant's Case.

The defendant, to maintain the issue on his part, read in evidence the act of Congress entitled "An act making further provisions for settling the claims to land in the Territory of Missouri," approved 13 June, 1812; and also the act of Congress entitled "An act supplementary to an act passed on the 13th day of June, 1812, entitled 'An act making further provision for set-

tling the claims to land in the Territory of Missouri,' " approved 26 May, 1824.

Recorder Hunt's Proceedings—Objected to by Plaintiffs.

The defendant then offered in evidence the proceedings of Recorder Hunt under said act of May 26th, 1824, in respect to the claim of Louis Laroche's representatives. The plaintiffs objected to the reception of said evidence, and insisted that the same was incompetent: First. Because, in so far as said proceedings can in any wise affect the land now in controversy, the same were had, and the proofs therein taken without any notice to the State of Missiouri, to the inhabitants of township forty-five, or to the plaintiffs. Second. Because said proceedings, so far as they affect the land in dispute, were repugnant to the Constitution of the United States and of the State [of Missouri,] and in derogation of the sovereignty of the latter. The court decided that the proffered evidence was competent and legal, and admitted the same to be read to the jury. To such action of the court the plaintiffs duly excepted. The said proceedings and proofs were then read to the jury, as follows:

Hunt's Testimony.

Testimony relating to town and village lots, out-lots and common-field lots, in, adjoining, and belonging to the several towns or villages of Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Villa a Robert, Carondelet, Ste. Genevieve, New Madrid, New Bourbon, Little Prairie, and Mine a Burton, in Missouri, and the village of Arkansas, in the Territory of Arkansas, as directed by an act of Congress, passed May 26, 1824.

THEODORE HUNT,
Recorder of Land Titles.

(See Hunt's minutes, book 1, p. 1.)

Louis Laroche's legal representatives claim a common-field lot in the Big Prairie, containing two arpens in front, by about forty in depth; bounded south by the field formerly claimed by a man named Rando; east by vacant land; north by a field-lot, formerly owned by Parent, and west by vacant land.

B. Riviere's Testimony.

Baptiste Riviere, being duly sworn, says he knows the field-lot claimed; that upwards of forty years ago this field-lot, together with the others in Grand Prairie, was under cultivation and was cultivated at that time by Louis Laroche, who cultivated the same from that time until the fence was taken down, two or three years after the année du coup; and to the knowledge of this deponent

it was standing when he returned from among the Indians, having been taken prisoner when the Indians attacked this place, but remained standing for one or two years after his return.

his
BAPTISTE ⋈ RIVIRE dit BACCANNE.
mark.

Sworn before me, July 28th, 1825.

THEODORE HUNT,
Recorder of Land Titles.

N. Simonds's Testimony.

Nathaniel Simonds, being duly sworn, says he has known Rene Dodier, Gregoire Sepero, and John Fillean, for upwards of twenty years, and that he never heard anything against their integrity or veracity, and does believe they are entitled to full evidence, [credence.]

NATH'L SIMONDS.

Sworn to before me, 25 July, 1825.

THEODORE HUNT,
Recorder of Land Titles.

R. Dodier's Testimony.

Rene Dodier, being duly sworn, says he knows the lot claimed by Louis Laroche's legal representatives, and that yesterday he was on this lot, which is the one described, and that forty years ago their lot was owned and cultivated by Louis Laroche, who cultivated the same until the fence of Grand Prairie was taken down; that he was almost daily in the field of the Grand Prairie in those days, and was acquainted with the lots that were then cultivated, and the persons who owned and cultivated the different field-lots.

his
RENE ⋈ DODIER.
mark.

Sworn to before me, July 25th, 1825.

THEODORE HUNT,
Recorder Land Titles.

R. Paul's Translation.

Rene Paul, duly sworn, says that he has truly translated and read to Baptiste Riviere and Rene Dodiere their testimony, and that they say it was true; further, the deponent says he was on this field-lot yesterday with these witnesses, and that it showed evident marks of former cultivation.

RENE PAUL.

Sworn to before me, July 28th, 1825.

THEODORE HUNT,
Recorder of Land Titles.

Credibility of Witness.

Auguste Chouteau, being duly sworn, says he has known Baptiste Rivire dit Bacane for sixty years, and that said Baptiste Riviere has always sustained the character of an honest man, and a man of truth.

AUGUSTE CHOUTEAU.

Sworn to before me, Sept. 8th, 1825.

THEODORE HUNT,
Recorder of Land Titles.

Henry Chouteau, being duly sworn, says he has truly translated and read to his father, Auguste Chouteau, before he signed the same, the above deposition.

HENRY CHOUTEAU.

Sworn to before me, Sept. 8th, 1825.

THEODORE HUNT,
Recorder Land Titles.

Hunt's minutes book No. 2, pages 98, 99.

RECORDER'S OFFICE, *St. Louis*, 18 *May*, 1857.

I certify that the foregoing is correctly transcribed from the books in this office containing the minutes of the testimony taken by the recorder of land titles, under the first section of the act of Congress of the 26 May, 1824, entitled "An act supplementary to an act passed the 13th day of June, 1812, entitled 'An act making further provision for settling the claims to land in the Territory of Missouri.' "

ADOLPHE RENARD,
U. S. Recorder Land Titles Mo.

Extract from Hunt's Registry.

Registry of Certificates of Confirmation on town-lots, out-lots, and common field lots, issued by the Recorder of Land Titles.

Whose name issued.	Date of certificate.	Situation.	Remarks.	Quantity in arpens.
Louis Laroche's legal representatives.	July 28th, 1825.	Big Prairie near St. Louis.	Bounded south by the field-lot formerly claimed by a man named Rondo, east by vacant land, north by a field-lot formerly owned by Parent, west by vacant land.	

RECORDER'S OFFICE,
St. Louis, 18 *May*, 1857.

The above is correctly transcribed from the original list in this office, prescribed by the 3d section of the act of 26th May, 1824, supplementary to the act of 13th June, 1812, making further provision for settling the claims to land in the Territory of Missouri.

ADOLPHE RENARD,
U. S. Recorder Land Titles, State of Missouri.

Copy of List from Surveyor Gen'l's Office.

Defendant then offered in evidence the authenticated copy of list from surveyor general's office of the confirmations furnished that office by the recorder of land titles, which is as follows:

(592.)—No. 589.

Louis Laroche's legal representatives.	1825. July 28.	Big Prairie Common-field near St. Louis.	Bounded south by the field-lot claimed formerly by a man named Rondo, east by vacant land, north by a field-lot owned formerly by Parent, west by vacant land.	One front by about forty deep.

RECORDER'S OFFICE,
St. Louis, *October* 15*th*, 1837.

I, Theodore Hunt, recorder of land titles in the State of Missouri, do certify the foregoing record, contained in forty-seven pages, commencing with Louis Lemond, and ending with the field-lot of Titus Strickland, contains all the village lots, out-lots, and common-field lots, the boundaries of which have been proven before me, under the provisions of an act of Congress approved 26th of May, 1824, entitled "An act supplementary to an act passed on the 13th June, 1812, entitled 'An act making further provision for settling the claims to land in the Territory of Missouri.' "

THEODORE HUNT.

OFFICE OF THE SURVEYOR GENERAL ILLINOIS AND MISSOURI,
St. Louis, *May* 18*th*, 1857.

I certify that the above *date* in relation to the claim of Louis Laroche's legal representatives in Big Prairie, and the annexed certificate of the recorder of land titles, are correctly copied; the former from page 26, and the latter from pages 48 and 49, of a list in this office, which was returned to the surveyor general by the said recorder in pursuance of the 3d section of the act of Congress

of the 26th May, 1824, referred to in the above mentioned certificate.

JOHN LOUGHBOROUGH,
Surveyor General.

The defendant then offered in evidence a paper, purporting to be a survey, duly certified by the surveyor general, of the lot of Louis Loroche's representatives, as proved before Recorder Hunt in the proceedings just before set forth, and being U. S. survey No. 1,665.

Objection.

The plaintiffs objected to the reception of such paper, because—

1. The survey in manner and form as the same appeared to have been made was not authorized by law.

2. Said survey embraced the land in controversy, which the United States had absolutely sold and granted to the State of Missouri more than thirty years before the date of such survey. The court decided that such paper was good and competent evidence, and permitted the same to be read to the jury. To such action of the court the plaintiffs duly excepted. The said paper was then read as follows:

Survey No. 1,665.

Survey No. 1,665.

Plat and description of the survey of a tract of land of 67.56 acres, situate in the Grand Prairie common-field of St. Louis, in township 45 north of the base line, range 7 east of the 5th principal meridian, in the State of Missouri, executed in the years 1850 and 1855, by William H. Cozens, deputy surveyor, under instructions from the surveyor general for Illinois and Missouri, dated the 9th of May, 1846, and the 22d of February, 1855; this being the tract of two by forty arpens confirmed to Louis Laroche's legal representatives by the act of Congress of the 13th of June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri," the extent and boundaries whereof were proven on the 28th of July, 1825, before Theodore Hunt, United States recorder of land titles in the State of Missouri, in conformity with the provisions of the act of Congress of the 26 May, 1824, entitled "An act supplementary to an act passed on the 12th day of June, 1812, entitled "An act making further provisions for settling the claims to land in the Territory of Missouri." See Recorder Hunt's minutes-book No. 2, page 98, in the office of the recorder of land titles. See also No. 592 in Hunt's list in the office of the surveyor general.

T. 45 N., R. 7 E., of 5th Principal Meridian.

[*For Plat see original, page* 23.]

Description of Survey.

Description: Beginning at a point in the middle of the Olive street plank-road, the southeast corner of the Louis Lacroix's survey numbered 1,664, and the northeast corner of this survey; thence north 61° west, with the south boundary of the Louis Lacroix survey, and with the middle line of the Olive street plank-road, at 4 chains and 85 links the eastern edge of Grand Avenue, at 6 chains and 7 links the western edge of Grand Avenue, at 7 chains and 31 links the toll-gate of the road, at 46 chains and 20 links a culvert over a branch 5 links wide running southwest, at 65 chains and 61 links a cedar post at the intersection with the west boundary of section 16 in township 45 north, range 7 east, which is also a line of survey numbered 2,712, in the name of James Conway or legal representatives; at 75 chains and 96 links a culvert over a branch five links wide, running southwest; at 113 chains and ten links a stone 20½ inches long, six inches wide, and three and a half inches thick, at the intersection with the west boundary of the James Conway survey, which is also a line of survey numbered 2,500 in the name of Joseph Hunot or legal representatives, from which the northwest corner of the James Conway survey and the southwest corner of survey numbered 2,692, in the name of Joseph Genereux or legal representatives, bears north 57 links distant; and at 116 chains and 91 links a stone 10 inches long, 7½ inches wide, 4 inches thick, the southwest corner of the Louis Lacroix survey and the northwest corner of this survey; thence south 28 degrees and 45 minutes west, five chains and 83 links to a stone 13 inches long, 7 inches wide, three inches thick, in the northern boundary of survey numbered 1,813 in the name of Vincent Bonis' legal representatives under Pierre Chouteau, the southwest corner of this survey; thence south 61 degrees east, with the northern boundary of the Vincent Bonis survey; at 7 chains 19 links, a stone 14½ inches long, 6½ inches wide, and 6 inches thick, at the intersection with the line between the Joseph Hunot and the James Conway surveys; at 21 chains and 19 links a point in the western side of a farm-house; at 31 chains and 48 links a board fence bears northeast and southwest; at 37 chains and 63 links a rail fence; at 41 chains and 12 links a point about 60 links southward of the remains of an old chimney, said to be of Laroche's house; at 42 chains and 42 links a point about 50 links south of a spring; at 42 chains and 92 links a point in the middle of the bed of a branch 20 links wide, running southward; at 54 chains and 48 links a stone 13 inches long, 12 inches wide, and 3½ inches thick, at the intersection with the west boundary of section 16, which is a line of the James Conway sur-

vey; at 71 chains and 33 links a branch 5 links wide runs southwest; at 76 chains and 94 links a board fence; at 84 chains and 28 links a rail fence, and at 109 chains and 81 links a stone 15 inches long, 8½ inches wide and three inches thick, at the intersection with the northern boundary of survey numbered 903 in the name of widow Camp's legal representatives corner to this survey and to fractional section 16, from which a red oak five inches diameter bears south 30 degrees and 25 minutes west 7 links distant, and a red oak 5 inches in diameter bears north 74 degrees and 30 minutes west, 25 links distant; thence south 75 degrees and 25 minutes east with the northern boundary of the widow Camp survey, at one chain and 36 links the west edge of Grand avenue, at 2 chains and 51 links the east edge of Grand avenue, and at 7 chains and 33 links a well dressed stone 18 inches long, 13 inches wide, 2½ inches thick, marked "P. L." on the south side, corner to this survey, from which a black oak 18 inches in diameter bears north 54 degrees and 32 minutes west 138½ links distant; thence north 28 degrees and 45 minutes east four chains *anane* one link to the beginning corner.

Statement of Interferences with Surveys by Survey No. 1,665.

Statement of the Interferences of Survey No. 1,665 with other Surveys previously made.

The following surveys are founded upon certificates issued by Frederick Bates, United States recorder of land titles in the Territory of Missouri, under the provision of the act of Congress of the 17th February, 1815, entitled "An act for the relief of the inhabitants of the county of New Madrid, in the Missouri Territory, who suffered by earthquakes."

1st. Survey No. 2,500, certificate No. 161, issued to Joseph Hunot, or legal representatives, for 480 acres, on the 12 of August, 1816; located on the 16 June, 1818, by Rufus Easton; survey by Joseph C. Brown on the 23d June, 1819; patent certificate No. 404 issued on the 2d February, 1833, by the recorder of land titles in the State of Missouri. Area of the interfering part 3.20 acres.

2d. Survey No. 2,712, certificate No. 348, issued to James Conway, or legal representatives, for 200 arpens, on the 20 September, 1817; located on the 16 June, 1818, by Taylor Berry and Matthias McGirk; surveyed by Joseph C. Brown on the 23d June, 1819; patent certificate No. 322 issued by the recorder of land titles on the 20th May, 1823. Area of the interfering part = 27.63 acres.

3d. Section 16 reserved for the schools, surveyed in the year 1818, by Joseph C. Brown. Area of the interfering part = 36.73 acres.

OFFICE OF SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, May 23d, 1857.

The foregoing plat and description of survey numbered 1,665 are this day approved as recorded on pages 299 and 300 of this book.

(Signed) JNO. LOUGHBOROUGH,
Survey. General.

OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, September 3d, 1857.

The foregoing plat and description of survey No. 1,665, in the name of Louis Laroche's legal representatives, and the certificate of approval attached thereto, are correctly copied from pages 298, 299, and 300, of record book F, on file in this office.

JOHN LOUGHBOROUGH,
Surveyor General.

To Adolph Renard, Esq., U. States Recorder Land Titles, St. Louis, Mo.

RECORDER'S OFFICE,
St. Louis, 3d September, 1857.

I have this day issued confirmation certificate No. 144, on the foregoing survey, according to law and instructions.

ADOLPHE RENARD,
U. States Recorder Land Titles in the State of Missouri.

The defendant then gave in evidence the following confirmation certificate, accompanied by a survey which was a copy of the aforesaid United States survey No. 1,665, to wit:

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, 3d September, 1857.

Confirmation Certificate No. 144.

It is hereby certified that under the first section of the act of Congress approved the 3d day of June, 1812, entitled "An act making further provision for settling claims to lands in the Territory of Missouri," and the two acts of Congress of the 26 May, 1824, and 27 January, 1831, supplemental or having reference thereto, Louis Laroche's legal representatives were confirmed in their claim to a tract of land of two by forty arpens, situated in the Grand Prairie common-field of St. Louis.

It is further certified that the same has been lawfully surveyed, in conformity with said confirmation in the said common-field,

being in the township 45 north of the base line, range 7 east of the 5th principal meridian, in the State of Missouri, as appears from the accompanying plat and transcript of surveys 1,665, authenticated and returned on the 3d of September, 1857, to this office, by John Loughborough, surveyor general of the district of Illinois and Missouri, to wit: Beginning at A on the plat, the northeast corner of the survey, and running thence north 61 degrees west, with the northern line of the surveys, 116 chains 91 links to its northwest corner; thence south 28 degrees 45 minutes west, the western line of the survey, 5 chains 83 links to its southwest corner; thence south 61 degrees east, with the southern line of the survey, 109 chains 81 links to a corner thereof; thence south 75 degrees 25 minutes east, with a line of the survey, 7 chains 33 links to a corner thereof; and thence north 28 degrees 45 minutes east, with the corner line of the survey, 4 chains and one link to the beginning corner, all in English measure; said survey No. 1,665 contains $67\frac{56}{100}$ acres.

It is further certified that the whole area of said survey No. 1,665 is interfered with by surveys previously executed, viz., to the amount of $36\frac{73}{100}$ acres, in section 16, reserved for the schools, and in the following surveys of locations, under the act of Congress of the 17th of February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes," to wit, to the amount of $3\frac{20}{100}$ acres, in survey No. 2,500, under certificate No. 161 issued to Joseph Hunot's legal representatives for 480 acres; and of $27\frac{63}{100}$ in survey 2,712, under certificate No. 348 issued to James Conway, or legal representatives, for 200 arpens.

In testimony whereof, I have hereunto set my hand on the day and in the year above written.

ADOLPHE RENARD,
U. States Recorder of Land Titles, State of Missouri.

Recorded on page 142 of book of confirmation certificates.

Noise's Testimony.

The defendant then offered the testimony of Jacques Noise to prove that Louis Laroche, prior to the 20th day of December, 1803, cultivated the land now in dispute, as a lot in the Grand Prairie, under circumstances causing the same to be confirmed by the first section of the act of Congress of the 13 June, 1812.

Objection.

The plaintiffs objected to the reception of said testimony, on the ground that it was not competent for a party claiming under that section to adduce testimony to show that the subject of confirma-

tion was situate beyond the out-boundary line established by government. The court overruled the objection and permitted the testimony to be read to the jury, and the plaintiffs duly excepted. The said testimony was read as follows:

Francis Noise, being produced, sworn and examined, on behalf of the defendant, deposeth and saith: I resided in Cahokia; I think I am 65 or 66 years of age; I can't tell precisely. I may be a little older or younger. I was born in St. Louis, and lived there until 28 years of age, when I removed to Cahokia. I knew Louis Loroche. I knew of his cultivating some ground in Grand Prairie near St. Louis. It was two arpens in width by 40 in depth. It was a part of the common-fields in the *deduction* of the Grand Prairie. It was in the Grand Prairie. There were other people who cultivated there. They all lived in St. Louis. Laroche lived on Main street in St. Louis. These common-fields were all of the seme length, and the front and rear were on the same line. The front and rear lines now called the "Teait Quarré." Louis Laroche has been dead a great many years. I was 15 or 16 years of age when I knew Louis Laroche to cultivate that land. I recollect the time of the change of government very well; I was then 22 or 23 years of age. He cultivated wheat, corn, oats and peas. He cultivated the entire tract, and was considered a good cultivator. I cultivated myself in the common-fields, quite near the Laroche tract. I worked there until the fences broke down. That was what broke up the system of cultivation there. I know the tract cultivated by Laroche very well. I visited the tract two weeks ago, and can point out all the old landmarks. The foundation of the chimney of the house is still there in the ground. I know John Bpte Belcour. He took possession of the Laroche tract and built a house on it. I knew his wife and the whole family; she was the daughter of Joseph Lecompte. His mother was a Dufaux. The wife of Louis Laroche was a Dufaux. The wife of Belcour was the grand-daughter of Dufaux, and also Louis Laroche. I can't recollect the first name of Mrs. Belcour now, although I knew her very well. I know the Olive street plank road. The width of that road forms the northern boundary of the Laroche tract. Belcour took possession of the Laroche tract about 25 years ago. I can't tell how long he lived on it. The cultivation of Laroche was before the change of government, I think he cultivated before the year of the Grand Coup. My reason for thinking so is, that he received a ball through the leg on the Grand Prairie at the time of the attack. I was not born at the time of the Grand Coup. I know about it only from what I have heard, and Laroche limped when I knew him, and I was told that it was from the effect of a ball he then received.

Crosss-examination.

Cross-examined by R. M. Field, att'y.

I first knew Louis Laroche to cultivate the ground a very long time ago—probably 60 years. I can't tell how old he then was. He may have been 25 or 30 years of age. But when he died I should judge from his appearance that he was about 50; may be more or less. He died before the change of government. He was married to Miss Dufaux when I first knew him. I think he had but one child; I knew of but one daughter. I think her name was Victoire. She married Joseph Lecompe, who had but one child by her, Madame Belcour, who is now dead. Madame Belcour must have been about 24, 25 or 26 years of age when she died. I think she must have died 20 years ago. The lot next north of Laroche belonged to Vasquez Benito. There was no lot or vacant ground between the lot of Laroche and that of Benito Vasquez. In 1846, I gave a deposition before Peter Cruett, a justice of the peace, in relation to the land of Vasquez, and various other parties. My [opinion] then about the position of the lots of Vasquez and Laroche was the same as it now is. I did not then state that the lot next north of Laroche was occupied by Laberge. I did not know a man by the name of Laberge. A man by the name of Antoine Smith testified then something about Laberge; that he knew a man named Laberge, or Lobarge, who lived in that vicinity, probably on Vasquez's tract, or who had bought from or sold to Vasquez, I don't know which. Louis Laroche died in St. Louis; I was present at the funeral. If the old cemetery were in existence, I could go out and point out his grave. The wife of Laroche died four, five or six years before he did; she died at St. Louis. I was young when she died. She was about 30 years old—may be more. I can't say when she died. The Grand Prairie field had all the same eastern line. I knew the lot of widow Camp; it was in the cul de sac common-fields, advanced more towards the village than the eastern line of the Grand Prairie common-fields. I can't say how much more; I never measured it. Alexis Marié cultivated the lot next south of Laroche. The eastern line of Marié's lot was the same as that of Laroche. I knew Alexis Marié very well. I knew where Condé's lot was. I did not know Condé. Madame Camp's lot was the most northern one of the cul de sac common-fields. The Grand Prairie common-fields adjoined the cul de sac common-fields. Corneau's lot was next north of Madame Camp's. John Bte. Provencheré was next north of Corneau. Marié's lot was 2 + 40 arpens. Provenchere and Corneau each had 1 + 40 arpens.

Further deponent saith not.

his
FRANCIS ⋈ NOISE.
mark.

Witness: S. A. BENNETT.

Admissions.

The plaintiffs admitted, for the purposes of the present trial, that all the title of Louis Laroche, or his representatives, in the land in dispute, had become vested in the defendant, and that said Louis Laroche's claim, as separately surveyed, covered the same. No further evidence was given on either side.

Instructions asked by Plaintiffs.

The plaintiffs requested the court to give to the jury the following instructions and each of them:

1. The jury are instructed that the several matters of proofs adduced by the plaintiffs, if genuine, are effectual to show that the title to the land in dispute was vested in the State of Missouri on the 19th day of July, 1820, and that the same title has become vested in the plaintiffs. (Refused.)

2. The jury are further instructed that the proceedings before Recorder Hunt, under the act of Congress of 26 May, 1824, read in evidence by the defendant, have no force or effect as against the title of the State of Missouri, acquired in the year 1820. (Refused.)

3. The jury are further instructed, that the survey of the out-boundary read in evidence is to be considered by them as the official and authenticative survey of the out-boundary directed to be run by the act of Congress of the 13th June, 1812, binding on all parties claiming a confirmation by force of the first section of said act; and that all the evidence adduced by the defendant to show that the lot of Louis Laroche was situated on the land in controversy, outside of the out-boundary as marked by such survey, ought to be disregarded by the jury. (Refused.)

The court refused to give the said instructions or either of them, and to such refusal the plaintiffs duly excepted.

Instructions given by the Court on its own motion.

The court on its own motion gave the following instructions:

By virtue of the act of Congress of March 6th, 1820, and the ordinance declaring the assent of the people of the State of Missouri thereto, dated 19th July, 1820, whatever title the United States may have had in the land described in plaintiffs' petition at the time of the passage of that act, if it be the sixteenth section or a fractional part thereof, passed to and vested in the State of Missouri for the use of schools, and by the act of legislature of this State, approved March 3d, 1851, and the order of the county court read in evidence, if you find that order genuine, the plaintiffs have the right to sue for said land; and if you find that the defendant at the commencement of this suit was in the possession of any portion of said land, you should find for the plaintiffs, unless

you believe defendant has shown a better title as hereinafter mentioned. (Given.)

So far as this case is concerned, the defendant admits that at the commencement of this suit he was in the possession of portion of the premises described in the petition, and the plaintiffs admit that whatever title to the land in possession of the defendant may have been at any time vested in Louis Laroche was at the commencement of this suit, and now is, vested in the defendant. (Given.)

Defendant's Instructions.

The court then, on motion of defendant, gave the following instructions:

1st. If the jury find from the evidence that a tract of land of which the premises in possession of the defendant at the commencement of this suit are a part, was cultivated by Louis Laroche prior to the 20th day of December, 1803; that said Louis Laroche was, at the time of such cultivation, an inhabitant of the town of St. Louis; that said tract of land was situated in the Grand Prairie, in the neighborhood of said town, and was used by the said Louis Laroche for the purposes of cultivation, and was one of a series of lots of similar form and character, also used by inhabitants of said town for the purposes of cultivation, and lying adjoining to each other in the same general range of lots, then the plaintiffs are not entitled to recover. (Given.)

2d. If the jury find from the evidence that on the 3d day of March, 1825, Louis Laroche designated the lot of which the premises in possession of the defendant at the commencement of this suit are a part, as being confirmed to him by the act of Congress of 13th of June, 1812, entitled "An act making further provision for settling claims to land in the Territory of Missouri," on the ground of inhabitation, cultivation, or possession, prior to the 20th day of December, 1803, by proving before the recorder of land titles of said Territory the fact of his cultivation and possession thereof, and the boundaries and extent of said lot, and that said recorder did thereupon issue a confirmation certificate for said lot to said Louis Laroche and furnish the surveyor general of said Territory with a list of the lots so proved, in which list was that of the said Laroche, which lot was afterwards surveyed by said surveyor general, and the survey thereof approved by him on the 18th day of March, 1857, and on the 17th day of July, 1857, returned by him to the office of said recorder, who, on the first day of August, 1857, issued his certificate of confirmation thereof, then the plaintiffs cannot recover in this suit. (Given.)

To the giving of the aforementioned instructions the plaintiffs duly excepted. The jury found a verdict for defendant.

Motion for New Trial.

Within four days the plaintiffs moved for a new trial, as follows:

The plaintiffs move for a new trial—

1st. Because the court admitted incompetent and illegal evidence for the defendant, prejudicial to the plaintiffs.

2. Because the court misdirected the jury in matter of law arising on said trial.

FIELD,
For Plaintiffs.

The court overruled said motion, and the plaintiffs duly excepted.

Agreement.

It is agreed that the public acts referred to in the foregoing bill of exceptions may be read in any appellate court from any printed copy published by authority.

It is further agreed that the amount in controversy in this suit exceeds two thousand dollars.

This bill of exceptions filed.

J. R. LACKLAND,
Judge.

STATE OF MISSOURI,
County of St Louis, ss.

I, Stephen Rice, clerk of the circuit court within and for the county aforesaid, certify the foregoing to be a true transcript of the record and proceedings in the above entitled cause, as fully as the same now remain on file in my office.

In testimony whereof I hereunto set my hand and affix
[SEAL.] the seal of said circuit court, at office in the city of St. Louis, this 27 day of January, A. D. 1858.

STEPHEN RICE, *Clerk.*

Suggestion of death and Motion.

Afterwards, in said supreme court, at the March term, 1858, the attorneys for the plaintiffs in error appeared and suggested the death of William Milburn, one of said commissioners, and moved the court for a rule on said defendant in error to show cause at the next term of this court, if any he have, why the writ of error herein should not be prosecuted in the name of the surviving plaintiffs in error. And thereafter, during said term, the court granted said rule, and ordered the cause continued until the next term.

Rule on Defendant to show cause, &c.

Afterwards, there issued from the office of the clerk of said court a rule in words as follows:

THE STATE OF MISSOURI, *ss.*

The State of Missouri to the Sheriff of the county of St. Louis, in said State, greeting:

Whereas, in the case of William Milburn, William Glasgow, jr., and William C. Taylor, commissioners of the sixteenth section, township forty-five north, range seven east, plaintiffs in error, against James A. Hardy, defendant in error, it has been represented to our supreme court of said State, at the March term, 1858, that since the return of the writ of error in said cause into said supreme court, and before an assignment of errors had been filed in said cause, the said William Milburn has departed this life:

These are, therefore, to command you, that you summon James A. Hardy, said defendant in error, to be and appear before our said supreme court, on the first day of the next term thereof, to be begun and held at the court-house, in the city of St. Louis, on the third Monday in October next, to show cause, if any he have, why the writ of error aforesaid should not be prosecuted in the name of the surviving plaintiffs in error, the said William Glasgow, junior, and the said William C. Taylor, and have you then there this writ, with your return endorsed thereon.

In testimony whereof, I hereto set my hand and the seal of said supreme court at office, in St. Louis, this 3d day of September, 1858.

[SEAL.] WM. S. GLANVILLE, *Clerk.*

Return on Writ.

In due time said writ was returned with the following endorsement thereon:

Executed this writ in St. Louis county, on the 9th day of September, 1858, by delivering a copy of the same as furnished by the clerk to the within named James A. Hardy.

M. S. CERRE, *Sheriff.*
By GEORGE STEVENS, *Deputy.*

Defendant appears.

Afterwards, at the October term, 1858, on the 13th day of November, the following further proceedings were had in this cause:

In obedience to a rule on the said James A. Hardy, ordered at the last term of this court, on motion of the said William Glasgow, junior, and the said William C. Taylor, surviving commissioners and plaintiffs in error in this cause, now appears the said defendant in error by his attorney, and consents that this cause be revived and prosecuted in the name of the aforesaid surviving commissioners, the said William Glasgow, junior, and the said William C. Taylor; and the said defendant in error further con-

sents that this cause be continued until the next term of this court; thereupon the cause is continued.

Assignment of Errors.

Afterwards the said plaintiffs in error appear and file an assignment of errors, in words as follows:

And the said surviving plaintiffs in error now come, and say that in the record and proceedings in this cause, the court below committed errors as follows:

1. In admitting illegal evidence tendered to the jury by the defendant below.

2. In refusing proper instructions to the jury proposed on behalf of the plaintiffs below.

3. In giving to the jury improper instructions objected to by plaintiffs below.

1. In rendering judgment for the defendant below.

5. In many other particulars appearing in the record.

Wherefore the plaintiffs in error pray that the judgment be reversed, and that they be restored, &c. By their attorneys,

FIELD & BATES.

Joinder in Error.

To which defendant in error, by his attorney, joined in errror, as follows:

Defendant in error says there is no such error in the record of proceedings in this cause as above assigned.

T. POLK,
Att'y for Deft. in Error.

Argued and Submitted.

Afterwards, at the March term, 1859, the parties by their attorneys appeared and argued this cause, and submitted the same to the court for decision.

Judgment.

Afterwards, at said March term, 1859, on the 27th day of May, 1859, judgment was rendered in this cause, as follows:

WILLIAM GLASGOW, JR., and WILLIAM C. TAYLOR, commissioners of the 16th section, township 45 north, range 7 east, Plaintiffs in Error, vs. JAMES A. HARDY, Def't in Error.	Error to Saint Louis Circuit Court.

Now, at this day come again the parties aforesaid, by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, do consider and adjudge that the judgment aforesaid, in form aforesaid by said circuit court rendered,

be in all things affirmed, and stand in full force and effect. And it is further considered and adjudged by the court, that the said defendant in error recover against the said plaintiffs in error his costs and charges herein expended, and have thereof execution.

Opinion of the Court.

And on rendering the aforesaid judgment, the court delivered a written opinion, which is in words as follows:

One of the questions presented by this record is, whether the act of 13th June, 1812, confirmed any lot outside the out-boundary directed by that act to be run by the surveyor general, and upon this question it is deemed unnecessary to add anything to what has already been said in the cases involving this point: Milburn vs. Hortiz, 23 Mo. R., 836; Taylor vs. Hardeman, Ib. 539; Schultz vs. Lindell, 25 Mo., 576.

The only question discussed in this case was the admissibility of the proceedings before the recorder of land titles (Hunt) under the act of 26 May, 1824, and the certificate of his successor (Renard) of a confirmation to Laroche of the lot in controversy under the act of 13 June, 1812, and the survey made by the surveyor general of the U. States, or under his directions, in 1855.

This testimony was objected because it was all made under a law passed subsequent to the consummation of the plaintiffs' title, and without any notice to the State of Missouri, or the plaintiffs claiming under the State, and because it was repugnant to the Constitution of the U. S. and of this State, and in derogation of the sovereignty of this State.

By the act of the 13 June, 1812, the United States was divested of all title to the property described in the first section of that act as confirmed to private claimants. The act was a grant proprio vigore, and the title of each claimant under it was complete at its date, and he could maintain his ejectment upon mere proof of inhabitation, cultivation or possession, without any further or other evidence of title.

In 1824, however, Congress, with a view to prevent the embarrassments which claimants under the act of 1812 would necessarily experience from a dependence on the fleeting memory and uncertain lives of witnesses, and to furnish to the government, also, the means of distinguishing the public from the private lots, authorized the recorder of land titles to receive proof from the claimants, of their cultivation, inhabitation or possession, and the extent and boundaries of the same, and to issue certificates of confirmation to such persons as made satisfactory proof thereof. It was to promote the convenience of claimants that this act directed them to appear before the recorder within a limited period, and make their proofs, so that the recorder could give them certificates of confirmation upon these certificates. By an act of the legislature of Missouri, an

action of ejectment could be maintained, and by the decisions of the courts here they have been held prima facie evidence of title in the claimants under the act of 1812, against all the world, and conclusive on the United States and the claimants who accept them.

But the act of 1824 also had in view the convenience of the government in procuring a distinct designation of the public property within the towns and villages subject to be reserved for military purposes, or to be subsequently appropriated to the use of schools. For this purpose the recorder was directed to furnish his list of confirmations, with their extent and boundaries, to the surveyor, to serve him as a guide in discriminating the private from the public lots, the latter of which he was expressly ordered to survey.

The act of 13th June, 1812, did not contemplate any survey of the private lots, probably on the supposition that they had been already surveyed or designated under the former government, or could be easily distinguished by their occupation or cultivation. But the act of April 29th, 1816, expressly required a survey of all confirmations made previous to its passage, as well as all which might thereafter be made. The act of 1824 does not, in express terms, order a survey of the private lots, perhaps for the reason that the act of 1816 had already directed it; but, as the surveyor was, even under the act of 1824, required to distinguish the private from the public lots, and expressly required to survey the latter, it might be inferred that the performance of the duty expressly enjoined necessarily implied a survey of each class of lots. However this may be, as the act of 1816 undoubtedly gave the authority to survey the private claims, it is not material that such authority should be construed to be a second time conferred upon him by the act of 1824.

The practice, it is believed, has been, after the date of the act of 1824, for the surveyor to have the common-field lots, as well as the commons, surveyed, either by virtue of this last named act or the preceding one of 1816; and such surveys have been regarded legitimate evidence in the courts of this State and the federal courts. A survey of the commons, it is true, was expressly directed by the act of 1824; but it was only in cases where they had not been previously surveyed.

If the certificates of confirmation be admissible to prove a title under the act of 1812, we can see no reason for excluding the surveys. Both are made after all interest in the property had passed from the government. It may be conceded that the admission of either is somewhat anomalous in principle; but it has received the sanction of the courts for so great a length of time, that to call it in question now would be dangerous to the stability of important interests resting on the faith of their decisions.

There is no distinction between the title to commons and that to field-lots or town lots, so far as this question is concerned. A

survey of the St. Louis commons made in 1832, twenty years after the United States had parted with all interest in the land in this survey, has uniformly been received in evidence as prima facie proof of their extent and boundaries, not only against the U. States, but all opposing claimants deriving title therefrom. This practice has received the sanction of the Supreme Court of the U. States in several cases.

In the case of Janes' Adm'r vs. Gurno, (6 Mo. R. 330,) a case decided nearly twenty years ago, the same positions now assumed in opposition to the admissibility of this kind of testimony under the act of 1824 were taken by Mr. Geyer, and fully discussed, and, I need hardly add, with great ability. It was urged then, as now, that this evidence was ex parte in its character, and was not designed to, and could not, in its nature, affect private claimants, however conclusive it might be, on the government; and that the U. States could not invest one of their subordinate executive officers in Missouri with quasi judicial functions to pass upon the validity of and fix the locality of titles which had years before entirely passed from that government, and over which it had ceased to have any control. But the court considered the matter then as res adjudicata; Judge Tompkins, indeed, further maintaining that these certificates were not merely prima facie but conclusive evidence upon all parties concerned. This too, it will be observed, was in a case where the certificate of confirmation given by Recorder Hunt was used against a title emanating from the same act of 1812. So, in Soulard vs. Allen, (18 Mo. R., 595,) the certificate was used against a title originating under the act of 1816. The adverse titles, in both cases, against which the certificates were used, had their inception and consummation prior to the act of 1824, under which the evidence was taken.

It is plain that these certificates of confirmation and surveys under the act of 1824 can avail nothing unless they are allowed to show title in 1812. They do not purport to do anything else. They do not profess to grant land at their date, or to certify that land was granted at their date; but that the confirmations were made in 1812, and by virtue of the act of 13 June, of that year. They must therefore either be admitted to prove that or go for nothing.

As the plaintiff in this case offered no evidence in rebuttal of the prima facie case made out by the defendant, the instructions given by the court were proper. The evidence being prima facie, was, of course, conclusive in the absence of any proof to the contrary. The judgment is affirmed. The other judges concur.

W. B. NAPTON.

Bond on Writ of Error.

And on the 23d day of June, 1859, the said plaintiffs in error filed a bond herein, which is as follows:

Know all men by these presents, that we, James A. Rogers and R. M. Field, are held and firmly bound unto James A. Hardy, in the full and just sum of five hundred dollars, to be paid to the said James A. Hardy, his heirs, executors, administrators, and assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 23d day of June, in the year of our Lord 1859.

Whereas, at the March term, 1859, of the supreme court of the State of Missouri, in a suit depending in said court between William Glasgow, jr., and William C. Taylor, surviving commissioners of the 16th section, in township 45 north, of range 7 east, plaintiffs, and James A. Hardy, defendant, judgment was rendered against the said plaintiffs, and the said plaintiffs having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendant, citing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next: Now, the condition of the above obligation is such, that if the said plaintiffs shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

JAS. A. ROGERS. [SEAL.]
R. M. FIELD. [SEAL.]

Approved by William Scott, presiding judge of the supreme court within and for the State of Missouri, this 23d June, 1859.

WILLIAM SCOTT.

THE STATE OF MISSOURI, *ss.*

I, William S. Glanville, clerk of the supreme court of said State, held at St. Louis, hereby certify that the foregoing is a full, true and complete transcript of the record and proceedings of said court in the cause of William Glasgow, junior, and William C. Taylor, commissioners of the sixteenth section, township forty-five north, range seven east, plaintiffs in error, against James A. Hardy, defendant in error, as fully as the same remain of record and on file in my office.

In testimony whereof, I hereto set my hand, and the seal of said court, at office in Saint Louis, this 27th day of August, A. D. 1859.

[SEAL.]

WM. S. GLANVILLE, *Clerk.*

Citation.

The United States of America to James A. Hardy, greeting:

You are hereby cited and admonished to be and appear at a

Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Missouri, wherein William Glasgow, jr., and William C. Taylor, surviving commissioners of 16th section, in township 45 north, of range 7 east, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William Scott, presiding judge of the supreme court of the State of Missouri, this 23d day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

WILLIAM SCOTT.

Rec'd, St. Louis, Oct. 25, 1859, a copy of the within, with same effect as if served on me by the marshal of the United States for the district of Missouri.

TRUSTEN POLK.

Assignment of Errors.

In the Supreme Court of the United States—December Term, 1859.

WILLIAM GLASGOW, JR., and WILLIAM C. TAYLOR, surviving Commissioners, &c., Plaintiffs in Error,
vs.
JAMES A. HARDY, Defendant in Error.

And now come the plaintiffs in error, and say that for causes of error in the judgment and proceedings below, they assign the following, viz:

1. The court below allowed improper and illegal evidence to be given to the jury against the plaintiffs, notwithstanding their objections to the same.
2. The court below gave improper and illegal instructions to the jury, to the prejudice of the plaintiffs.
3. The court below refused proper and legal instructions to the jury, moved on behalf of the plaintiffs.
4. The court below gave judgment for the defendant, whereas it manifestly appears, from the record, that judgment should have been given for the plaintiffs.

Wherefore, the plaintiffs pray for a reversal of the judgment, and that they be restored to their just rights.

By their Attorney,
L. G. PICOT.

Filed 9th December, 1859.